IN THE HIGH COURT OF UTTARTANCHAL
AT NAINITAL
Criminal Misc. Application No. 622/2004

Indra Pal Singh
S/o Mohan Singh
Proprietor Gagan Enterprises
274-S/1 Nay a Bazar Delhi-6

applicant

Versus

1. Upper Session Judge
   II Fast Track Court,Udham Singh Nagar,
2. Judicial Magistrate.Khatima,
   Udham Singh Nagar
3. Sohan Lal Sharma s/o Tirth Ram,
   Proprietor of Jai Hind Industries Tanakpur Road,
   Khatima
   PS Khatima,District Udham Singh Nagar.

Opposite parties

Hon'ble B.C. Kandpal, J

This petition under Section 482 Cr.P.C has been filed by the applicant Indra Pal Singh who is facing trial before the court below under Sections 138, 142 Negotiable Instruments Act.

The petitioner moved an application before the court below that he is residing at Delhi and it is not possible for him to attend the court on every date , therefore his personal attendance before the court during the course of trial should be exempted.

The said application was rejected by the court below. Thereafter the petitioner moved revision before the revisional court and the revisional court also dismissed the revision vide order dated 27.8.2005.

Feeling aggrieved by the aforesaid impugned order , the petitioner has preferred this petition before this court.

Heard learned counsel for the petitioner, learned AGA and perused the record.

The learned counsel for the petitioner has invited my attention to a decision by Hon'ble Apex Court reported in 2001 (2) 43 ACC 760 M/s Bhaskar Industries Ltd. versus M/s Bhiwani Denim and Apparels Ltd and others and h as submitted that the personal attendance of the accused can be exempted and the evidence before the court can be taken into record through his advocate.

I have perused the judgment cited by the learned counsel for the petitioner before me and I am of the view that the facts and circumstances of the present case are different from the case cited by the learned counsel for the petitioner.

It is worthy to mention here that the petitioner was summoned in the year 1999, thereafter he protested against the summoning order which was rejected by the court below. The petitioner, also filed revision before the revisional court which was also dismissed.

The petitioner has not appeared before the court below on any date after the summoning order was passed against him. The court has issued non bailable warrants against him and has also issued the process under Section 82/83 Cr.P.C. The petitioner has neither appeared before the court below nor has obtained his bail as yet..

The court below has rightly observed that merely on this ground that the petitioner is residing at Delhi , his personal appearance before the court cannot be exempted.

The Hon'ble Apex court has clearly observed in the above cited case law that the personal attendance of the accused can be exempted in rare cases or in a case where it appears to the court that the accused was actually not in a position to attend the court physically. In this case nothing has been shown on behalf of the petitioner that the accused is physically

incapable in appearing before the court. Moreover, the conduct of the accused as such is that the he cannot be granted any liberty by the court.

The court below has rightly refused the application of the petitioner and the revisional court has also dismissed the revision on correct appreciation of the law.

I do not find any abuse of process of the court as there is no flagrant injustice going to be caused to the petitioner by way of impugned order.

The petition therefore being devoid of merit is dismissed.

(B.C. Kandpal,J.)

22.11.2005
nbj